

Message Text

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DRAFTED BY L/EB:HRGAITHER:EJS

APPROVED BY L/M/SCA:KEMALMBORG

JUSTICE: M.R.STEIN (INFO)

ARA/APU - JOHN R. DAVIS

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R 071418Z MAR 74

FM SECSTATE WASHDC

TO AMEMBASSY BUENOS AIRES

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E.O. 11652: N/A

TAGS: CPRS, PFOR, AR

SUBJ: EXTRADITION - LEGAL REPRESENTATION

REF: BUENOS AIRES 1171

1. IN LIGHT OF THE CONVERSATION REPORTED REFTEL WITH GONI, DEPT LEGAL OFFICER GAITHER WHO NEGOTIATED U.S./ARGENTINE EXTRADITION TREATY DISCUSSED MATTER WITH AN ARGENTINE EMBOFF. THIS EMBOFF HAD BEEN INVOLVED IN WASHINGTON IN THE NEGOTIATION OF THE TREATY ON THE ARGENTINE SIDE AND IS MOST FAMILIAR WITH THE BACKGROUND OF THE NEGOTIATIONS.

2. THE CONVERSATION CONFIRMED THE DEPT'S VIEW THAT THE TREATY WAS DESIGNED TO AVOID THE NECESSITY OF EITHER SIDE'S GOVERNMENT HAVING TO HIRE OUTSIDE COUNSEL. THE TREATY WITH ARGENTINA WAS RE-NEGOTIATED FROM TWO POINTS OF VIEW WITH RESPECT TO THE INTEREST OF ARGENTINA. THE FIRST INTEREST WAS THE DESIRE TO AVOID THE EXCESSIVE LEGAL FEES INVOLVED IN EXTRADITION UNDER THE FORMER AGREEMENT AND THE SECOND TO UPDATE THE AGREEMENT IN TERMS OF OFFENSES. AT THE TIME OF THE ARGENTINE REQUEST ON THE FIRST MATTER THE DEPT WAS NOT ENTIRELY CERAIN THAT THE REQUEST COULD BE HONORED. BUT AFTER WORKING OUT THE INTERNAL GOVERNMENTAL PROBLEMS IT WAS AGREED THAT THE ARGENTINE REQUEST

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COULD BE ACCEPTED.

3. WHILE WE APPRECIATE THE SUGGESTION OF GONI THAT PRIVATE ATTORNEYS WOULD BE THE MOST EFFECTIVE MANNER IN WHICH TO PROCEED IN ARGENTINA, THIS WOULD BE CONTRARY TO THE INTENTION OF THE PARTIES AT THE TIME OF THE NEGOTIATION AS IS REFLECTED IN ARTICLE 19, FIRST PARAGRAPH, OF THE TREATY.

4. WITH RESPECT TO THE PROBLEM OF DEFECTS IN THE DOCUMENTATION, GAITHER'S NOTES REFLECT THAT THIS MATTER WAS DISCUSSED DURING THE NEGOTIATION AND IT WAS EXPLAINED THAT, ON THE U.S. SIDE, WE WOULD REVIEW THE DOCUMENTATION SUBMITTED BY ARGENTINA FOR LEGAL SUFFICIENCY PRIOR TO TRANSMISSION TO THE DEPT OF JUSTICE WHICH WOULD ALSO REVIEW THE DOCUMENTATION. IT WAS POINTED OUT THAT ANY DEFECT IN DOCUMENTATION WOULD BE BROUGHT TO THE ATTENTION OF THE ARGENTINE GOVT WHICH WOULD THEN HAVE AN OPPORTUNITY TO CORRECT WHATEVER DEFECT MIGHT BE FOUND. IT WOULD BE IMPLICIT IN THE RECIPROCITY CONCEPT OF EXTRADITION THAT THE U.S. WOULD RECEIVE THE SAME TREATMENT OF ITS REQUEST BY THE ARGENTINE AUTHORITIES.

IN OUR EXTRADITION RELATIONS WHEREIN A DIFFERENT LEGAL SYSTEM IS INVOLVED, IT HAS NOT BEEN UNUSUAL FOR THE DISTRICT ATTORNEY TO PLAY THE ROLE OTHER THAN ADVOCATE AS IS DONE IN THE U.S. WE NEVERTHELESS VIEW THE TREATY WITH ARGENTINA, AS WITH SIMILAR TREATIES CONTAINING THE SAME OBLIGATIONS, AS CREATING THE RECIPROCAL OBLIGATION TO REVIEW THE EXTRADITION REQUEST FOR SUFFICIENCY AND TO NOTE ANY DEFICIENCIES IN ORDER THAT THAT DEFICIENCY MAY BE CURED. THIS CONCEPT IS DRAFTED INTO THE TREATY ITSELF IN ARTICLE 13.

5. THE DEPT APPRECIATES THE FACT THAT THE ARGENTINE "DISTRICT ATTORNEYS" DO NOT HAVE THE FINAL RESPONSIBILITY FOR THE DECISION OF A CASE AND THAT THEY, IN ESSENCE, ACT IN A ROLE WHICH IS SIMILAR TO AN ADVISER TO A COURT RATHER THAN AS AN ADVOCATE. NEVERTHELESS WE VIEW THE TREATY AS REQUIRING A REVIEW BY A GOA LEGAL OFFICER AS TO ITS LIKELY SUCCESS AND IF IT IS DEEMED THAT IT MIGHT
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BE UNSUCCESSFUL WE WOULD EXPECT, UNDER ARTICLE 13, TO BE SO INFORMED AND GIVEN AN OPPORTUNITY TO CORRECT WHATEVER DEFICIENCIES MIGHT BE FOUND. WHICH LEGAL OFFICER OF THE ARGENTINE GOVT PERFORMS THIS TASK WOULD NOT BE A RELEVANT CONSIDERATION FOR THE USG. THUS, WE WOULD WISH EMBASSY TO INQUIRE AS TO THE POSSIBILITY OF THE DISTRICT ATTORNEYS REVIEWING THE REQUEST AS INDICATED AND ALERT THE EMBASSY OF POSSIBLE DEFECTS PRIOR TO TRANSMISSION OF THE CASE TO THE JUDGE.

6. BEGIN FYI. LEGAL OFFICER GAITHER DISCUSSED SUBSTANCE OF ABOVE CABLE WITH ARGENTINE EMBOFF WHO IS IN COMPLETE AGREEMENT WITH LEGAL INTERPRETATION OF TREATY. EMBOFF INDICATED THE EMBASSY HAD NOT BEEN INFORMED BY GOA OF THE PROBLEM AND THAT HE WOULD COMMUNICATE BACK TO THE GOA. WHILE DEPT DEEMS IT ADVISABLE FOR EMBASSY TO APPROACH GOA AS INDICATED PARA 5, IT MIGHT BE ADVANTAGEOUS TO PERMIT THE ARGENTINE EMBASSY TO HAVE ITS OWN VIEWS INDICATED TO GONI TO REINFORCE THE LEGAL POSITION WE HAVE TAKEN. DEPT WILL BE IN COMMUNICATION WITH ARGENTINE EMBASSY TO MAKE SURE FOLLOW-UP IS MADE AND WILL REPORT TO EMBASSY WHEN INDICATION OF ACTION HAS BEEN OBTAINED. END FYI. KISSINGER

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